

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SALVADOR LEYVA,

Plaintiff,

CIVIL CASE NO. 04-40171

v.

COACHMEN R.V. COMPANY, et al.,

HONORABLE PAUL V. GADOLA
U.S. DISTRICT COURT

Defendant.

_____ /

ORDER DENYING DEFENDANT'S MOTION IN LIMINE

Before the Court is Defendant's Motion in Limine to Preclude Evidence from Plaintiff's Expert Witness, filed on August 29, 2005. Defendant seeks to have all evidence from Plaintiff's expert witness excluded from trial because Plaintiff's witness has not provided the expert report required by Fed. R. Civ. P. 26(a)(2). Defendant also seeks to have Plaintiff's expert's testimony excluded for failing to meet the standards of Federal Rule of Evidence 702 and *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993).

However, Defendant's own expert has not provided an expert report either. To hold Plaintiff to a standard that Defendant has not met would be inconsistent. Fed. R. Civ. P. 37(c)(1) provides that "[a] party that without substantial justification fails to disclose information required by Rule 26(a) . . . is not, unless such failure is harmless, permitted to use as evidence at a trial, at a hearing, or on a motion any witness or information not so disclosed." Because Defendant's own expert has also failed to provide an expert report, such failure on the part of Plaintiff is harmless. Furthermore, Defendant has failed to demonstrate how Plaintiff's expert does not meet the standards embodied

in F.R.E. 702 and *Daubert*. While an expert's report may help in determining whether an expert meets the standards of F.R.E. 702 and *Daubert*, an expert report is not required by either of the two.

ACCORDINGLY, IT IS HEREBY ORDERED that Defendant's Motion in Limine to Preclude Evidence from Plaintiff's Expert Witness [docket entry 29] is **DENIED**.

SO ORDERED.

Dated: September 9, 2005

s/Paul V. Gadola
HONORABLE PAUL V. GADOLA
UNITED STATES DISTRICT JUDGE

Certificate of Service

I hereby certify that on September 9, 2005, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following:

Thomas D. Esordi; Mark P. Romano; John M. Sier, and I hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participants: _____.

s/Ruth A. Brissaud
Ruth A. Brissaud, Case Manager
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